

No. 80411-7

Stephens, J. (concurring)—While I agree with the majority’s resolution of this case, I do not agree that RV Associates’ request for attorney fees and costs is procedurally barred by RAP 18.1. As the dissent correctly observes, we have found compliance with RAP 18.1 where, as here, a party requests attorney fees and costs in its supplemental brief. This is consistent with our preference for liberal construction of the appellate rules, set forth in RAP 1.2(a):

These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

I agree with the dissent that, at this juncture, RV Associates is not a “prevailing party” entitled to attorney fees under RCW 60.04.181(3). This determination must abide further proceedings on remand. However, we should not foreclose RV Associates’ opportunity to seek recovery of the attorney fees and costs it incurred on appeal if it is ultimately determined to be the prevailing party in this action.

AUTHOR:

Justice Debra L. Stephens

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WE CONCUR:

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Justice Barbara A. Madsen

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